

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 01-0256 AGI
ADJUSTED GROSS INCOME TAX
FOR TAX PERIODS: 1999-2000

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Issues

Adjusted Gross Income Tax: Imposition

Authority: IC 6-3-2-1, IC 6-3-4-8(a), IC 6-3-1-8, 26 U.S.C.A. Sec. 61(a), 26 USCA 3402(1), Thomas v. Indiana Department of Revenue, 675 N.E.2d 362 (Ind. Tax 1997), Snyder v. Indiana Department of Revenue, 723 N.E.2d 487 (Ind. Tax 2000).

The taxpayer protests the imposition of the adjusted gross income tax.

Statement of Facts

The taxpayer filed Indiana Part Year or Full Year Non Resident Individual Income Tax Returns for the years 1999 and 2000. He claimed a refund of the taxes withheld for each of the two years. The Indiana Department of Revenue did not pay the refund for 1999. After review, the Indiana Department of Revenue determined that the taxpayer owed additional individual income taxes for the year 2000 and issued a bill for the additional taxes, interest and penalty. The taxpayer protested the additional assessment and the denial of the refund for 1999. A hearing was held. More facts will be provided as necessary.

Adjusted Gross Income Tax: Imposition

Discussion

An adjusted gross income tax is imposed upon all Indiana residents. IC 6-3-2-1. The taxpayer argues that he has no Indiana Adjusted Gross Income for 1999 and 2000 and therefore does not owe any tax. The taxpayer notes that the Indiana Code borrows some of its

definitions from the Internal Revenue Code. For instance, “gross income” is defined at IC 6-3-1-8 as having the meaning as defined by section 61(a) of the Internal Revenue Code.” Section 61(a) that states in part:

Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:

- (1) Compensation for services, including fees, commissions, fringe benefits, and similar items. . .

The taxpayer contends that since the word “wages” is not listed in Section 61, wages are not taxable income. Therefore he entered “zero” on the line titled “Wages, Tips, other Compensation” on his federal tax returns. He then entered his federal adjusted gross income of “zero” on his Indiana returns. Following this logic, the taxpayer protested the assessment of additional tax, penalty and interest for 2000 and denial of the refund for 1999.

The Indiana Tax Court has disposed with arguments that wages do not constitute income. In Thomas v. Indiana Department of Revenue, 675 N.E.2d 362 (Ind. Tax 1997), the Tax Court stated:

[e]ven assuming the validity of Thomas’s legal framework, monetary payments made in exchange for labor are clearly severed from labor and received or drawn by the recipient for his separate use, benefit, or disposal.

In Snyder v. Indiana Department of Revenue, 723 N.E.2d 487 (Ind. Tax 2000), the Court specifically states at page 491 that “wages are income for purposes of Indiana’s adjusted gross income tax.” The taxpayer’s income is subject to the Indiana Adjusted Gross Income Tax.

The taxpayer further argued that his employer erred by withholding taxes from his compensation after the taxpayer asserted that he had no liability for Indiana income tax. Pursuant to IC 6-3-4-8(a). Indiana employers are required by law to withhold Indiana individual income taxes if they are required to withhold federal income taxes on any employee. 26 USCA 3402(1) requires that “every employer making payment of wages shall deduct and withhold upon such wages.” In this case, the employer was paying wages and had to deduct taxes from those wages no matter what the taxpayer averred.

Finding

The taxpayer’s protest and claim for refund are denied.